

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 745 of 1986

AND

SPECIAL CIVIL APPLICATION No 746 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMAR KHANDSARI UDYOG

Versus

STATE OF GUJARAT

Appearance: (In both S.C.A.s)

MR YH VYAS for Petitioners

MR AT DAVE for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/02/98

ORAL JUDGMENT

As both these Special Civil Applications proceed on common facts and grounds of challenge to the impugned order, the same are being taken up for hearing together and are being disposed of by this common order.

2. The facts of the case are that in both these petitions, the petitioners have raised construction for installation of Khandsari factory on their lands without Non Agricultural permission being granted to them and without sanction of lay-out plans for raising construction thereon. Later on, the N.A. permission has been granted by the competent authority in favour of the petitioners and the lay-out plans for construction have also been sanctioned. Those orders of competent authority were taken up in revision under Section 211 of the Bombay Land Revenue Code by respondent No.1 and the N.A. permission granted by the competent authority has been set aside. Hence this Special Civil Application.

3. Manifold contentions have been raised by learned counsel for the petitioner challenging the validity, legality and correctness of the orders impugned in this Special Civil Applications of respondent No.1, but only on the ground of delay in initiating the proceedings for setting aside the orders of competent authority under which the N.A. permission has been granted to the petitioners and lay-out plans for construction have been sanctioned, as this writ petition deserves to be accepted, it is not necessary to advert to all those contentions.

4. In the Special Civil Application No.745 of 1986, the competent authority has passed the order on 28th July 1981 granting N.A. permission to the petitioners and regularising the construction illegally made by petitioners of Khandsari factory, on payment of certain charges. Under another order dated 11th February 1982, the lay-out plan submitted for construction of Khandsari factory has been approved by the competent authority. The respondent No.1 has given notice for review of the orders of competent authority to the petitioner on 30th March 1983, and the order impugned, ultimately has been passed on 19th February 1985, setting aside the aforesaid two orders of the competent authority.

5. Reply to these Special Civil Applications has not been filed. The petitioners have come up with the case in Special Civil Applications that they have invested about Rs.16 Lacs in the land, plant and machinery, and building of Khandsari factory. Delay in initiating the action for review of the order of the competent authority granting N.A. permission to the petitioners has not been explained by respondent No.1. It is true that under Section 211 of the Bombay Land Revenue Code, no limitation has been prescribed within which the

revisional authority has to exercise suo-motu powers to review the order of lower authorities, but, in absence of any limitation, it is equally true that such power has to be exercised within a reasonable time. what should be the reasonable time, is nowhere provided, but it has to be considered with reference to the facts of each case. One of the important considerations is that by delay in taking of the action whether the position of the party concerned has been changed or not and whether it has reached to a stage of irretrivable character. In the present case, if we go by the dates of the orders passed by the respondent-competent authority, then the first order has been passed on 28th July 1981, which is the main order. So far as the second order dated 11.2.82 is concerned, it is only a consequential order. In the first order, the N.A. permission has been granted and illegally raised construction of Khandsari factory has been regularized subject to payment of Rs.10,000/- by way of penalty charges. So the notice has been given for review of this order after about one year and eight months. This delay in the facts that the construction has already been raised and the petitioners have invested huge amount of Rs.16 Lacs in the lands, plant and machinery and for constructing the Khandsari factory is fatal to the action of the respondent. In case now this factory is ordered to be demolished, then the amount spent by petitioners will be sheer waste. Moreover, the factory has been started and the employees working therein will be rendered jobless. Even if it is taken that the respondent-competent authority has illegally acted in granting the N.A. permission and regularising the construction, then too the action should have been taken within a reasonable time and in the facts that construction has already been made and factory has already been started, this delay of about one year and eight months in exercising suo-motu revisional powers by respondent No.1 is unreasonable. Moreover, the officers of the State Government permitted the petitioners to raise illegal construction. If it is a case of raising illegal construction, no explanation is forthcoming from the side of the State government as to why its officers who have been deputed to stop such illegal construction, have not taken any action. The very fact that illegal construction of the factory has been made goes to show that it is only possible with connivance of the officers and without their connivance, it would have been too difficult for the petitioners to raise construction. The petitioners have been penalized by respondent-State but the respondent-State has not taken care to see that the erring officers are also dealt with severely. Those officers are accountable to the State for their inactions

and omissions of not obstructing the action of raising illegal construction of the factory on the said lands, but probably, those officers would have been rewarded by way of promotions etc. In such matters, leaving apart the question that suo-motu revisional powers under Section 211 of the Bombay Land Revenue Code have to be exercised by respondent No.1 within reasonable time, it is foremost and important for the State Government to take necessary action against the erring officers who have permitted all this illegal construction. Once this construction has been raised and the factory has been started on the lands of the petitioners, the course adopted by the competent authority to grant N.A. permission and regularizing the construction subject to payment of penalty seems to be appropriate, and even if it is taken to be not appropriate, then too, the delay in exercising of suo-motu revisional powers by respondent No.1 is fatal to the case. Only on this short ground, this writ petition deserves to be accepted.

In the Special Civil Application No.746 of 1986 also, the order has been passed by competent authority on 28th July 1981 and notice has been given for exercise of suo-motu review of that order under Section 211 of the Bombay Land Revenue Code, on 30th March 1983. In this case also, undisputedly, Rs.15 Lacs have been spent by petitioners in the lands, plant and machinery, and building of Khandsari factory, and later on the illegal construction has been regularized subject to payment of penalty charges. For the reasons given above, this writ petition also deserves to be accepted.

In the result, both these Special Civil Application succeed and the same are allowed. The orders of respondent No.1 dated 19th February 1985, annexure 'A' in both these Special Civil Applications are quashed and set aside. Rule made absolute in both the Special Civil Applications. No order as to costs.

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(sunil)